



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0271]

Hours of Service of Drivers: RJR Transportation, Inc. (RJR); Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant the application of RJR Transportation, Inc. (RJR) for an exemption to increase the 100 air-mile radius in “short-haul operations” to 150 air miles for its drivers. RJR requested the exemption for all its operators of commercial motor vehicles (CMVs) to enable the drivers not exceeding the 150 air-mile radius to utilize time records instead of a record of duty status (RODS) for that day. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: This exemption is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and expires June 7, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-2722. E-mail: hoursofservice@dot.gov. If you have

questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

FMCSA reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

RJR Transportation, Inc. (RJR) requested an exemption to increase the 100 air-mile radius in 49 CFR 395.1(e)(1) to 150 air miles for its drivers. This would enable RJR's drivers not exceeding the 150 air-mile radius to utilize time records instead of a

record of duty status (RODS) for that day. If granted, this exemption would spare RJR from having to install electronic logging devices (ELDs) on all its CMVs. RJR is a local trucking operation based in Northern California operating on dedicated routes, with more than 98 percent of its trips within a 100 air-mile radius.

Most of RJR's drivers qualify for and operate under the 100 air-mile radius exemption in 49 CFR 395.1(e)(1); on a weekly or monthly basis, fewer than 5 percent of its drivers may exceed the 100 air-mile radius but none go beyond a 150 air-mile radius. Specifically, RJR services three areas outside the 100 air-mile radius which are all between 100 and 140 air miles from the normal work reporting location. RJR states that it will be forced to make a substantial investment in ELDs for just this short extension of the 100 air-mile radius.

RJR has five drivers who maintain paper RODS, but without this exemption all 60 of its CMVs will need to be equipped with ELDs to give the company the flexibility to put any driver in any vehicle, as it currently does. This represents a substantial and ongoing financial commitment not justified by the infrequent trips beyond the 100-air mile radius.

RJR states that it will continue to utilize automatic event recorders, which capture among other things speed, global positioning system location, hard braking events, and sudden turns. RJR therefore believes that granting the exemption will achieve a level of safety equivalent to the level that would be achieved absent the proposed exemption.

A copy of RJR's application for exemption is available for review in the docket for this notice.

IV. Public Comments

On October 18, 2018, FMCSA published notice of this application and requested public comment (83 FR 52875). The Agency received three comments, two opposed to the RJR exemption request. One comment was non-substantive. One of the commenters opposed to the exemption stated, “The number of requests for consideration for the FMCSA to increase the parameters of Part 395.1, i.e. increase the 100 air-mile radius to 150 air-mile radius and increase the 12 hours to 14 hours are directly related to Part 395.1 and exclusions from Part 395.8's ELD requirements. Again, if the FMCSA approves the request it will open the flood gates for more exceptions from other carriers desiring the same consideration. Once the FMCSA approves the request it will be difficult to refuse other applicants request for the same consideration. In my opinion the FMCSA should deny the request and look at Part 395.1 to see if there's any safety analysis to support expanding Part 395.1's exception from the ELD.”

FMCSA is obligated to review all exemption requests and to compare the standards set forth in the existing regulation to the requested exemption. If the applicant for the exemption provides alternatives that likely will achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation, then FMCSA will approve the exemption request. RJR's application explained an infrequent use of the granted exemption and provided alternatives to ensure a level of safety equivalent to or greater than would be achieved. The terms and conditions outlined in this notice are intended to ensure uniformed enforcement on RJR drivers.

V. FMCSA Decision

FMCSA has evaluated RJR's application and the public comments and decided to grant the exemption. The Agency believes that the drivers of RJR's CMVs who are exempt will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)]. The exemption will allow RJRs drivers not exceeding the 150 air-mile radius to utilize time records instead of a record of duty status (RODS) for that day. The commenter's "flood gates" argument is not persuasive because exemptions are specific to the circumstances of the applicant. One exemption decision does not set a precedent for a different exemption application.

VI. Terms and Conditions for the Exemption

- Drivers must have a copy of this notice or signed FMCSA exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.
- Vehicles operated under the exemption must be equipped with automatic event recorders that capture speed, global positioning system location, hard breaking events, and sudden turns.
- Drivers may not travel beyond the 150 air-mile radius to be exempted from having to complete a record of duty status (RODS) for that day.
- Drivers must return to the work reporting location at the end of their shift.
- Drivers must have at least 10 consecutive hours off duty.

- This exemption is limited to the provisions of 49 CFR 395.1(e)(1)(i). These drivers must comply with all other applicable provisions of the FMCSRs.

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Notification to FMCSA

Any motor carrier utilizing this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

- (a) Identity of the exemption: "RJR"
- (b) Name of operating motor carrier,
- (c) Date of the accident,
- (d) City or town, and State, in which the accident occurred, or closest to the accident scene,
- (e) Driver's name and license number,
- (f) Vehicle number and State license number,
- (g) Number of individuals suffering physical injury,
- (h) Number of fatalities,
- (i) The police-reported cause of the accident,

(j) Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and

(k) The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be e-mailed to MCPSD@DOT.GOV.

TERMINATION

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record.

Interested parties or organizations possessing information that would otherwise show that this motor carrier is not achieving the requisite statutory level of safety should immediately notify FMCSA.

The Agency will evaluate any information submitted and, if safety is being compromised or if the continuation of this exemption is inconsistent with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA will immediately take steps to revoke the exemption of the company and drivers in question.

Issued on: May 30, 2019.

Raymond P. Martinez,

Administrator.